United Nations CERD/C/CHL/CO/19-21*

International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the combined nineteenth to twenty-first periodic reports of Chile, adopted by the Committee at its eighty-third session (12–30 August 2013)

1. The Committee on the Elimination of Racial Discrimination considered the nineteenth to twenty-first periodic reports of Chile, submitted in a single document (CERD/C/CHL/19-21), at its 2237th and 2238th meetings (CERD/C/SR.2237 and 2238), held on 13 and 14 August 2013. At its 2256th and 2257th meetings (CERD/C/SR.2256 and 2257), held on 27 August 2013, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the fact that the State party has submitted its periodic reports on such a regular basis. It wishes to express its appreciation for the frank dialogue held with the State party's large, high-level delegation, the responses that its members provided to the questions posed by Committee members and the additional information which was furnished in writing.

B. Positive aspects

3. The Committee is appreciative of the delegation's commitment to finding ways of meeting the challenges faced by the State party. It welcomes the legislative and institutional advances made in the effort to combat racial discrimination since the State party's submission of its last report, including:

(a) Act No. 20.405, which provides for the creation of the National Institute of Human Rights;

(b) Act No. 20.609, which establishes measures to combat discrimination (the Anti-Discrimination Act);

(c) Act No. 20.430, which incorporates international standards for the protection of refugees into Chilean law;

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(d) Act No. 20.507, which defines the offences of migrant smuggling and human trafficking, includes provisions for the protection of victims and guarantees the right to non-repatriation.

4. The Committee welcomes the standing invitation extended to all thematic special procedures and draws attention, in particular, to the visit carried out in July 2013 by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

5. The Committee notes with interest the work being done to preserve and promote the use of the languages of indigenous peoples.

6. The Committee welcomes the documentation and oral statement provided by the National Institute of Human Rights. It is also pleased to take note of the active participation and contributions of civil society in the consideration of the reports.

C. Concerns and recommendations

National Institute of Human Rights

7. While noting with satisfaction that the National Institute of Human Rights is accredited as an "A" status institution by the International Coordinating Committee of National Human Rights Institutions (ICC), the Committee on the Elimination of Racial Discrimination is concerned by the shortcomings identified by the ICC Subcommittee on Accreditation in terms of the immunities enjoyed by members of the Institute and its funding (art. 2).

The Committee encourages the State party to grant the Institute the broadest possible mandate and the means that it needs in order to promote and protect human rights and to guarantee the immunity of the Institute's members. It also encourages the State party to consider establishing an ombudsman's office with a section specializing in issues of racial discrimination whose staff would include intercultural facilitators at the local level.

Statistics

8. While appreciative of the statistics furnished by the State party, the Committee needs a more exhaustive set of reliable demographic statistics, including economic and social indicators that have been disaggregated by ethnic or national origin, on, in particular, indigenous peoples, Afro-descendants and other vulnerable minority groups, including gypsies, so that it can evaluate the extent to which such persons are able to avail themselves of their rights in the State party (art. 2, paras. 1 (a)–(d)).

The Committee recommends that the State party expedite the compilation and publication of statistics on the composition of its population, disaggregated in the manner specified in article 1, paragraph 1, of the Convention, including official data from the 2012 national census and from any other subsequent study or census that provides information on self-identified ethnic groups. The Committee requests that the State party provide it with this type of disaggregated data in its next periodic report.

Definition of discrimination and special measures

9. While noting the legislative advances made in the effort to combat racial discrimination, the Committee is concerned that references in the Anti-Discrimination Act to "arbitrary discrimination" could lead judges to arrive at an interpretation that would justify certain discriminatory actions and relieve the persons committing those actions of

responsibility. The Committee also regrets that the law in question does not clearly provide for special measures that would guarantee the full and equal enjoyment of human rights and fundamental freedoms by all groups in the State party (art. 1, paras. 1 and 4, and art. 2, paras. 1 and 2).

The Committee encourages the State party to revise the categories of discrimination which are deemed to be "non-arbitrary" in order to bring the Anti-Discrimination Act into line with the Convention. It also recommends that the State party clarify the fact that the law provides for the use of special measures to combat racial discrimination, taking into account its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention.

Racial discrimination offences and racist hate speech

10. The Committee reiterates its concern about the absence of a national law that is fully in conformity with article 4 of the Convention and that defines as an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, racially motivated violence, and participation in organizations or activities that incite racial discrimination (CERD/C/CHL/CO/15-18, para. 18) (art. 1 and art. 4, paras. (a) and (b)).

In the light of general recommendation No. 15 (1993) on the mandatory character of article 4 of the Convention, the Committee recommends that the State party:

(a) Rectify the lack of legislation that fully conforms to article 4 of the Convention;

(b) Redouble its efforts to promote tolerance and to prevent and combat xenophobia and racial prejudice among the various groups in society;

(c) Include statistics and other information in its next periodic report on investigations, trials and judgements concerning acts of incitement to racial discrimination or incitement to racial hatred.

Equality before the courts and access to justice

11. The Committee reiterates its concern about the absence of information on judicial cases concerning racial discrimination in the State party and follow-up thereto (CERD/C/CHL/CO/15-18, para. 26). The absence of such cases does not mean that racial discrimination does not exist but could be indicative of the presence of lacunae in the justice system. The Committee is also concerned by the obstacles faced by indigenous peoples in obtaining access to justice, including the unavailability of legal advice and interpretation services (arts. 2, 5, para. (a), and 6).

The Committee encourages the State party to continue its efforts to inform the members of the population about their rights and the legal remedies at their disposal for dealing with cases of racial discrimination and human rights violations. In the light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee invites the State party to take the necessary steps to ensure that indigenous peoples have access to justice by providing them with legal advice and interpretation services.

Constitutional recognition and consultation of indigenous peoples

12. The Committee observes with regret the difficulties involved in winning passage of constitutional amendments in the State party and the slow pace of progress towards gaining constitutional recognition of the rights of indigenous peoples. It also observes with regret

the slow pace of progress towards the establishment of an effective mechanism for consultation with indigenous peoples and for the promotion of their participation in accordance with international instruments such as, in particular, the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the United Nations Declaration on the Rights of Indigenous Peoples. It is concerned by the postponement of constitutional amendments until such time as a mechanism for consultation with indigenous peoples is in place. The Committee notes with regret that Supreme Decree No. 124 of the Ministry of Planning expressly precludes consultations concerning investment projects and has led to the award of contracts for production activities that impinge upon the rights of indigenous peoples. It also notes with regret that social tensions continue to grow (arts. 1, 2, 5 and 6).

Recalling its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee reiterates its preceding concluding observations (CERD/C/CHL/CO/15-18, para. 16) and urges the State party to:

(a) Place priority on recognizing the rights of indigenous peoples in the Constitution as a first step towards arriving at a consensus-based settlement of their claims;

(b) Fulfil its obligation to ensure that consultations are held with indigenous peoples and serve as a vehicle for their genuine participation in respect of any legislative or administrative decisions that may directly impinge upon their rights to the land and resources that they possess or that they have traditionally used, as established in the relevant international instruments;

(c) Take into account the recommendations made by the Special Rapporteur on the rights of indigenous peoples with regard to consultations with indigenous peoples;

(d) Expedite the establishment of an institutionalized mechanism for consultation in accordance with international standards.

Ancestral lands

13. Recalling the treaties signed by the State party with indigenous peoples, especially the Mapuche people, the Committee is concerned that the public tenders used for the recovery of land by the National Indigenous Development Corporation (CONADI) prevent many members of indigenous peoples from gaining access to their ancestral lands. The Committee also notes with concern that representatives of indigenous peoples claim that the tracts of land given to them in exchange for their ancestral lands, even in nearby areas, have often proven to be unproductive and difficult to make use of and that they do not form part of an overall strategy for the restitution of indigenous peoples' rights. While the Committee takes note of the regulations concerning environmental impact assessments that will soon enter into force, it reiterates its concern about the fact that indigenous peoples complain that their territories continue to be negatively affected by the development of natural resources, the establishment of waste disposal sites and the pollution of water and other subsoil resources located in or on those lands. The Committee regrets that the existing plans to halt some production activities do not provide for measures of redress (arts. 2, 5 and 6).

The Committee reiterates the recommendations it has made to the State party and encourages it to:

(a) Expedite the restitution of ancestral lands and furnish effective and sufficient means of protecting indigenous peoples' rights to their ancestral lands and resources in accordance with the Convention, other relevant international instruments

and the treaties signed by the State party with indigenous peoples (CERD/C/CHL/CO/15-18, para. 21);

(b) Increase its efforts to ensure that the restitution of indigenous peoples' lands forms part of an overall strategy for the restitution of their rights;

(c) Undertake environmental impact assessments on a systematic basis and hold free, prior and informed consultations with a view to obtaining indigenous peoples' free and fully informed consent before authorizing any investment project that could negatively affect their health or livelihoods in the areas that they inhabit (ibid., paras. 22 and 23);

(d) Take steps to provide redress for the damage sustained and place priority on resolving the environmental problems caused by such activities, which, according to a number of reports received by the Committee, are having harmful effects on the lives and livelihoods of indigenous peoples (ibid., para. 24).

The Counter-Terrorism Act and excessive use of force by agents of the State against indigenous peoples

14. The Committee welcomes the amendments made to Act No. 18.314 (the Counter-Terrorism Act). However, it remains concerned by reports that this law continues to be applied to a disproportionate extent to members of the Mapuche people in respect of acts that have taken place in connection with their assertion of their rights, including their rights to their ancestral lands (CERD/C/CHL/CO/15-18, para. 15). The Committee is concerned by the lack of objective legal criteria for the enforcement of this law in respect of Mapuches who are charged with committing a terrorist act and for the determination by police officers and public prosecutors of what types of charges to bring against them, all of which could constitute a violation of the principles of legality, equality and non-discrimination. The Committee also reiterates its concern about the undue and excessive use of force against members of Mapuche communities, including children, women and older persons, by members of Carabineros and the Investigative Police during raids and other police operations (ibid., para. 19) and about the impunity with which such abuse is committed. The Committee observes that the enforcement of the Counter-Terrorism Act and the undue and excessive use of force against members of the Mapuche people could have negative and discriminatory impacts on indigenous peoples that go beyond their impacts on the individuals suspected of having committed an offence (arts. 2 and 5).

The Committee recommends that the State party should, as a matter of urgency:

(a) Amend the Counter-Terrorism Act so that it specifies exactly what terrorist offences it covers;

(b) Ensure that the Counter-Terrorism Act is not applied to members of the Mapuche community for acts that take place in connection with the expression of social demands;

(c) Implement the recommendations made in this respect by the Human Rights Committee (2007) and by the Special Rapporteur on the rights of indigenous peoples (2003 and 2007) and take into account the preliminary recommendations made by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (2013);

(d) Investigate allegations that government employees have used violence against indigenous communities, particularly in the case of the Mapuche and Rapa Nui peoples;

(e) Monitor the application of the Counter-Terrorism Act and related practices in order to identify any discriminatory effect on indigenous peoples;

(f) Intensify and expand the human rights training provided to law enforcement officers and judicial officials to ensure the proper performance of their duties.

Indigenous languages and education

15. The Committee regrets that Mapudungun is taught only in the first four grade levels in primary schools where there are a large number of indigenous students and that the number and size of scholarships for indigenous students are too small to allow recipients to cover educational expenses in institutions other than those located in indigenous communities or settlements. In view of the role of the media and, in particular, community radio broadcasts in preserving languages used in widely scattered indigenous communities, the Committee regrets that members of indigenous peoples are confronted with constraints in this respect (arts. 2 and 5 (e) (v)).

The Committee recommends that the State party allocate sufficient resources to revive indigenous languages and ensure that indigenous peoples have access to education. The Committee also recommends that the State party consider fostering the use of indigenous languages in primary and secondary education and promote the involvement of indigenous teachers. It also urges the State party to adopt the necessary legislative and other measures to reduce the constraints faced by indigenous peoples with regard to the use of community-based media in order to promote the use of indigenous languages.

Marginalization of indigenous peoples

16. The Committee reiterates its concern about the fact that indigenous peoples continue to live in a state of poverty and marginalization (CERD/C/CHL/CO/15-18, para. 24). It continues to be concerned about the limited access which indigenous peoples, particularly indigenous women, have to a number of spheres of activity, especially those relating to employment, housing, health and education (ibid., para. 20). It is also concerned by the low level of participation by indigenous peoples in public affairs and regrets the lack of institutional mechanisms of representation which have been endorsed by indigenous peoples (arts. 2 and 5, paras. (d) (i) and (e)).

The Committee reiterates its earlier recommendation and urges the State party to take the necessary steps to provide indigenous peoples with effective protection from racial discrimination. It also encourages the State party to work side by side with indigenous peoples to develop policies for raising the educational levels and attaining the full-fledged participation in public affairs of indigenous peoples, especially indigenous women. The Committee encourages the State party to take into account its general recommendations No. 25 (2000) on gender-related dimensions of racial discrimination and No. 32 (2009) on the meaning and scope of special measures in the Convention in connection with the development and adoption of such measures.

Afro-descendants

17. The Committee regrets that the bill concerning the recognition of the Afro-descendant community in Chile has still not been passed (CERD/C/CHL/CO/15-18, para. 13). While it takes note that a survey is to be conducted, it is concerned by the lack of official information on the human rights situation with regard to the Afro-descendant population in the State party, which would appear to prevent the State party from gaining a

fuller understanding of that situation and developing suitable public policies to benefit Afro-descendants (arts. 1, 2 and 5).

In the light of general recommendation No. 34 (2011) on racial discrimination against people of African descent, the Committee reiterates its request that the State party provide information on the Afro-descendant members of the population. The Committee recommends that the State party expedite the passage of the bill concerning the recognition of the Afro-descendant population, include the category of Afro-descendants in its population and housing censuses, and adopt programmes and measures, including special measures, to ensure that Afro-descendants are able to avail themselves of their rights.

Migrants

18. The Committee reiterates its concern about the fact that migrants, particularly those of Latin American origin, continue to face discrimination and obstacles to the exercise of their rights. It also notes with concern that some parts of the media draw upon prejudices and stereotypes when referring to migrants. The Committee is concerned that the principle of *jus soli* is not applied to the children of migrant workers who are in an irregular situation in Chile, which in some cases may cause such children to be stateless (arts. 2 and 5).

The Committee reiterates its recommendation that the State party adopt effective legislative and other measures as necessary to guarantee equality for migrants in the exercise of the rights recognized in the Convention (CERD/C/CHL/CO/15-18, para. 17). It further recommends that the State party adopt effective educational and awareness-raising measures as necessary to counter any tendency to stereotype or stigmatize migrants. The Committee encourages the State party to ensure that the draft bill for the amendment of the Migration Act provides that migrant workers in an irregular situation can apply for Chilean nationality for their children if they do not have another nationality and encourages the State party to pass that bill soon. The Committee draws the State party's attention to the need to fully enforce Act No. 20.507, which defines the offences of migrant smuggling and human trafficking.

Refugees and asylum seekers

19. The Committee is concerned by reports that migrants and asylum seekers, especially Afro-descendants, have been subjected to abusive and discriminatory comments, particularly along the country's northern border. It is concerned by the State party's use of restrictive pre-admission procedures that are not in accordance with due process guarantees as set forth in international instruments. It is also concerned about the highly vulnerable position of unaccompanied migrant children (arts. 2 and 5).

The Committee recalls its general recommendation No. 30 (2004) on discrimination against non-citizens and recommends that the State party suspend its use of restrictive pre-admission procedures and ensure that persons in need of international protection are properly identified in a manner that is free from racial discrimination. It also recommends that legal and policy measures dealing with migration and foreign nationals do not discriminate against anyone on the basis of race, colour, or ethnic or national origin. It urges the State party to ensure that the draft bill for the amendment of the Migration Act is in compliance with international standards regarding the treatment of migrants who are in need of international protection and encourages the State party to pass the bill soon. The Committee also recommends that the State party intensify the human rights training that it offers to civil servants.

D. Other recommendations

Ratification of other treaties

20. The Committee encourages the State party to ratify the international treaties to which it is not yet a party, especially the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.

Amendment of article 8 of the Convention

21. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the International Convention on the Elimination of All Forms of Racial Discrimination, which was adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee recalls General Assembly resolution 67/156 of 20 December 2012, in which the General Assembly strongly urged States parties to accelerate their national procedures for ratification of this amendment to the Convention and to provide prompt notification in writing of their acceptance thereof.

The Durban Declaration and Programme of Action

22. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, when incorporating the provisions of the Convention — particularly articles 2 to 7 — into its national legislation, the State party take into consideration the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document of the Durban Review Conference held in Geneva in April 2009. The Committee requests that the State party include specific information in its next periodic report on action plans and other measures adopted to implement the Durban Declaration and Programme of Action at the national level.

Dissemination

23. The Committee recommends that the State party's reports be made readily available to the general public as soon as they are submitted and that the Committee's concluding observations with respect to these reports also be made readily available in the official language and, as appropriate, other languages commonly used in the State party.

Consultations with civil society organizations

24. The Committee recommends that the State party continue consulting and expanding its dialogue with civil society organizations working to protect human rights, in particular those combating racial discrimination, in connection with the preparation of its next periodic report and its follow-up to these concluding observations.

Follow-up to concluding observations

25. In accordance with rule 65, paragraph 1, of its rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of these concluding observations, on its follow-up to the recommendations contained in paragraphs 10, 12 and 14 above.

Paragraphs of particular importance

26. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 13, 15, 17 and 18 above and requests the State party to provide detailed information in its next periodic report on the specific measures taken to act upon them.

Core document

27. The Committee takes note with interest of the information provided by the State party's delegation concerning the finalization of its core document and invites the State party to submit that document in accordance with the harmonized guidelines for reporting to human rights treaty bodies, particularly those relating to the common core document which were approved at the fifth inter-committee meeting of the human rights treaty bodies, held in June 2006 (see HRI/GEN/2/Rev.4).

Preparation of the next report

28. The Committee recommends that the State party submit its twenty-second and twenty-third periodic reports, combined into a single document, by 31 August 2016, taking into account the treaty-specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in these concluding observations. The Committee also urges the State party to observe the page limits of 40 pages for treaty-specific reports and 60–80 pages for the common core document (HRI/GEN/2/Rev.6, chap. I, para. 19).

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